

JK

6329

.A6A5

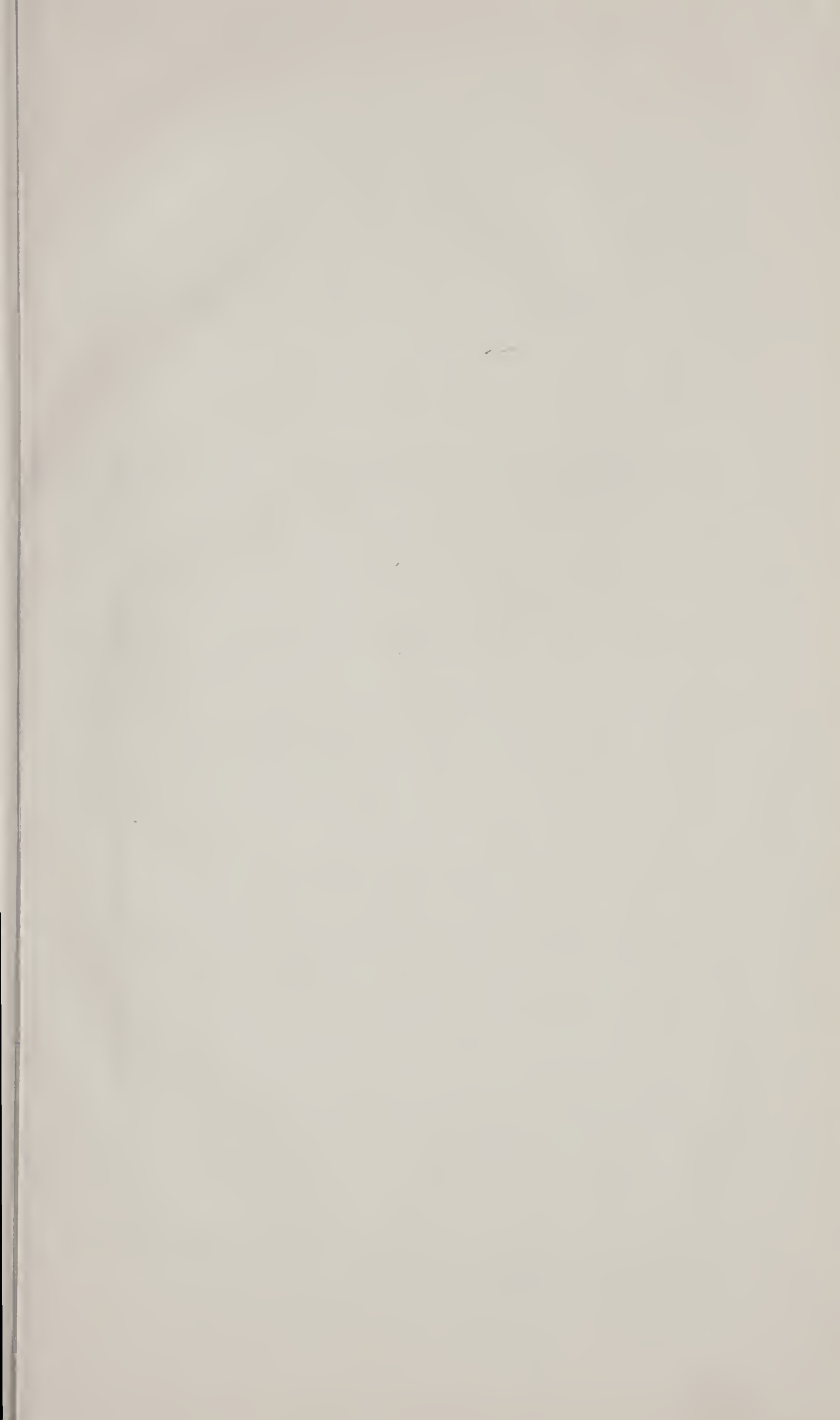
1868

IOWA ATTORNEY GENERAL

OPINION

JAN. 30, 1868





CONSTITUTIONAL AMENDMENT.

RESOLUTION, REPORT OF COMMITTEE,

AND

OPINION OF THE ATTORNEY GENERAL.

RESOLUTION.

WHEREAS, The Eleventh General Assembly approved a proposition to amend the Constitution of the State of Iowa, as will be seen in Chapter 98 of the Acts of the said General Assembly; and

WHEREAS, Doubts exist as to the legality of said proposition or act; therefore,

Resolved, That the Committee on Amendments to the Constitution take such action as is necessary to have a legal opinion on this matter, or such recommendation as they may deem proper touching this case.

Passed the House, January 29, 1868.

M. C. WOODRUFF, *Chief Clerk*.

JK 6329
.A6 A5
1868

REPORT OF COMMITTEE.

Your Committee on Constitutional Amendments, to whom was referred the accompanying resolution authorizing them to take such action as would be necessary to obtain a legal opinion as to the legality of certain steps already taken to amend the Constitution of the State, beg leave to report that they have obtained the written opinion of the Attorney General on the subject; that said opinion, herewith submitted, expresses that no reasonable doubts exist as to the legality in form and substance of the steps already taken, which meets with the decided approval of the committee, and they recommend action accordingly.

JOHN McKEAN, *Chairman.*

February 1, 1868.

OPINION OF THE ATTORNEY GENERAL.

STATE OF IOWA, OFFICE OF ATTORNEY GENERAL,
DES MOINES, January 30, 1868.

To the Committee on Constitutional Amendments, House of Representatives: —

In reply to your resolution of this date, a copy of which is hereto appended, I have the honor to submit the following, viz :

Recognizing the fundamental right that the people only can alter or amend the Constitution, it is provided in that instrument, Article 10, Sec 1, how (the mode and manner) any amendments may be submitted to or brought to the attention of the people —

1st. *Any* amendment may be proposed in either House of the General Assembly, and if agreed to by a majority of both Houses, shall be entered on the journals, &c., and referred to the Legislature to be chosen at the next general election, and published for three months previous to making such choice.

Chapter 98, of the Acts of the Eleventh General Assembly, proposes several amendments to the Constitution.

This proposition was agreed to by a majority of both Houses, and referred to the present General Assembly. It is suggested by Gov. Stone in his last message to the General Assembly, that grave doubts exist as to the regularity of the act (Chapter 101 of the Acts of the Eleventh General Assembly) referring said proposition to the present General Assembly and providing for its publication.

With the greatest deference for the opinion therein expressed by His Excellency, Gov. Stone, I beg to submit, that these doubts are not well founded, for the following among other reasons :

2d. No formal reference to the next General Assembly is necessary. The approval of the proposition by a majority of both Houses, its entry on the journal with the yeas and nays, &c., is in and of itself a reference to the next General Assembly, both in form and substance. Any further action of the General Assembly in respect to such reference is a mere work of supererogation.

3d. It shall be published as provided by law, &c., for three months previous, &c. After the approval and entry on the journals, above mentioned, it becomes the manifest duty of the Secretary of State to make the publication without any further direction — to make it *as provided by law*.

The publication was in fact made, and the requirements of the Constitution with respect to this proposition have been complied with both in form and substance.

4th. Even if it should be deemed essential to the validity of such action, that special and formal direction should be given by the General Assembly, for the reference and publication of such proposition, certainly such direction can, in no sense, be said to be a *law*, to require an enacting clause and all the formalities of an Act of the General Assembly. A joint resolution is not only sufficient, but would be the more proper form to give it. In this view, Chap. 101, of the Acts of the last General Assembly, contains all the essentials of such a direction — it is passed by both houses and approved by the Governor.

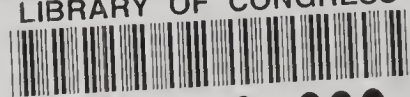
The people, not the legislature, make and amend the Constitution. They desire, as early and speedily as the law will permit, to vote on these amendments, and I respectfully submit that no mere technical objections should be interposed to prevent or retard the action of the people in the premises. I think it will be found that not even a technical objection exists in the present case; on the contrary, the requirements of Article 10 of the Constitution, have been faithfully complied with in its letter and spirit.

With great respect, &c.,

HENRY O'CONNER,

Attorney General.

LIBRARY OF CONGRESS



0 033 239 023 5